



BRB No. 15-0429

MALIK KHAN

Claimant-Petitioner

V.

HUNTINGTON INGALLS
INCORPORATED - PASCAGOULA
OPERATIONS

Self-Insured

Employer-Respondent

DATE ISSUED: Apr. 12, 2016

DECISION and ORDER

Appeal of the Decision and Order of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

Ben E. Clayton (Clayton Law Firm, L.L.C.), Slidell, Louisiana, for claimant.

Paul B. Howell and Susan F.E. Bruhnke (Franke & Salloum, PPLC),
Gulfport, Mississippi, for self-insured employer.

Before: BUZZARD, GILLIGAN and ROLFE, Administrative Appeals
Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2014-LHC-1075, 2014-LHC-1423) of Administrative Law Judge Patrick M. Rosenow rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge if they are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

On April 13, 2013, claimant commenced employment with employer as a welder. On or about August 7, 2013, claimant experienced pain and numbness in his fingers. Claimant sought medical treatment and, on October 1, 2013, he underwent a trigger

finger release on his right ring and little fingers. Employer voluntarily paid claimant temporary total disability benefits from September 30 through November 10, 2013, and permanent partial disability benefits for a two percent impairment to his right hand. 33 U.S.C. §908(b), (c)(3). Claimant returned to work on November 11, 2013 with no loss of wage-earning capacity.

In March 2014, claimant informed employer that he had sustained a work-related loss of hearing. On June 19, 2014, claimant resigned his position with employer. He subsequently sought medical treatment for his hand symptoms both in the United States and during a visit to Pakistan. Before the administrative law judge, claimant sought disability benefits for his alleged work-related hearing loss, temporary total disability benefits for the period he was in Pakistan seeking medical treatment, reimbursement for emergency room charges in the United States associated with treatment of his hand condition, and authorization to treat with a physician of his own choosing.

In his Decision and Order, the administrative law judge denied claimant's claim for hearing loss benefits, finding that claimant did not establish his prima facie case. Alternatively, the administrative law judge found that employer presented substantial evidence to rebut the Section 20(a), 33 U.S.C. §920(a), presumption, and that a preponderance of the evidence as whole establishes that claimant's hearing loss was not related to any exposure to noise. The administrative law judge denied claimant's request for reimbursement for his two emergency room visits, implicitly finding that they were neither reasonable nor necessary for the treatment of claimant's hand injury, as well as claimant's claim for disability benefits during his visit to Pakistan. Lastly, the administrative law judge found that claimant chose to be treated by Dr. Wiggins, who was an appropriate specialist, and that employer was not required to authorize claimant's request to be seen by another physician.

Claimant appeals the administrative law judge's decision denying his claims for additional benefits for his work-related hand condition and alleged work-related loss of hearing. Employer responds, urging the Board to affirm the administrative law judge's decision in its entirety.

The Board is authorized to decide appeals raising a substantial question of law or fact. The Board must affirm the administrative law judge's findings of fact if they are supported by substantial evidence of record. 33 U.S.C. §921(b)(3). Consequently, the circumscribed scope of the Board's review authority necessarily requires a party, who is represented by an attorney, to address the findings in the administrative law judge's decision and to allege why substantial evidence does not support it. *Shoemaker v. Schiavone & Sons, Inc.*, 20 BRBS 214 (1988); *Carnegie v. C&P Telephone Co.*, 19 BRBS 57 (1986); 20 C.F.R. §802.211. The mere recitation of favorable evidence does

not meet this minimal threshold. *Carnegie*, 19 BRBS at 59; *Prater v. Upper Beaver Coal Co.*, 6 BLR 1-448 (1983).

In this case, claimant has failed to meet these threshold requirements. Claimant's brief in support of his appeal is essentially an identical copy of the post-hearing brief he submitted to the administrative law judge. The Board has held that when a brief addressed to the administrative law judge is submitted to the Board on appeal as a petition for review and brief, such a submission is inadequate to invoke the Board's review, as the party has failed to address the administrative law judge's findings and conclusions in a manner sufficient to allege why substantial evidence does not support the administrative law judge's findings or to identify errors of law. *Collins v. Oceanic Butler, Inc.*, 23 BRBS 227 (1990). Although claimant's brief alleges four erroneous conclusions in the administrative law judge's decision, *see* Cl. Br. at 5-6, the remainder of the pleading fails to address the administrative law judge's specific findings of fact and conclusions of law or explain why they are erroneous. Consequently, as claimant has not adequately challenged the administrative law judge's decision, the decision is affirmed.¹ *Collins*, 23 BRBS at 229; *Carnegie*, 19 BRBS at 59.

¹ We note that claimant may apply to the district director for a change in physician pursuant to Section 7(b) of the Act, 33 U.S.C. §907(b), and 20 C.F.R. §702.407. *See generally Jackson v. Universal Maritime Serv. Corp.*, 31 BRBS 103 (1997) (Brown, J., concurring). If an issue arises over the necessity of treatment and the parties cannot resolve the issue informally before the district director, the issue must be resolved by an administrative law judge. *Weikert v. Universal Maritime Serv. Corp.*, 36 BRBS 38 (2002); 20 C.F.R. §702.316.

Accordingly, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge